

107TH CONGRESS
1ST SESSION

H. R. 536

To amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for a minimum hospital stay for mastectomies and lymph node dissections performed for the treatment of breast cancer.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 2001

Ms. DELAURO (for herself, Mr. DOYLE, Mr. ETHERIDGE, Mr. EHRLICH, Mr. PALLONE, Mr. CAPUANO, Mr. DEFazio, Mr. HORN, Mrs. MALONEY of New York, Mr. TIERNEY, Ms. WOOLSEY, Mr. FARR of California, Mr. BROWN of Ohio, Ms. VELÁZQUEZ, Mr. McNULTY, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. MINK of Hawaii, Mrs. MORELLA, Mr. FILNER, Mr. PHELPS, Mr. THOMPSON of California, Mrs. CAPPS, Mr. MCINTYRE, Ms. WATERS, Mr. GONZALEZ, Mr. BARRETT, Mr. QUINN, Mr. SHOWS, Ms. BALDWIN, Mr. BORSKI, Mr. MALONEY of Connecticut, Mr. HINCHEY, Mr. HILLIARD, Ms. KAPTUR, Mr. SPRATT, Mr. BOUCHER, Mrs. ROUKEMA, Mr. GREEN of Texas, Ms. NORTON, Mr. BURTON of Indiana, Mr. KING, Mr. HOYER, Mr. DINGELL, Mr. OLVER, Mr. WEINER, Mr. REYES, Mr. BONIOR, Mr. HOLDEN, Mr. FROST, Mr. ROSS, Mr. TRAFICANT, Mr. KILDEE, Mr. LARSON of Connecticut, Mr. BLAGOJEVICH, Mr. COOKSEY, Mr. MATSUI, Mrs. MEEK of Florida, Mr. GEORGE MILLER of California, Mr. WYNN, Ms. LEE, Mr. NADLER, Mr. BENTSEN, Mr. BALDACCI, Ms. MCCARTHY of Missouri, Mr. SANDERS, Mr. JEFFERSON, Mr. MEEHAN, Mr. KUCINICH, Ms. PELOSI, Ms. BERKLEY, Mr. DELAHUNT, Mr. VISCLOSKY, Mr. UDALL of New Mexico, Mrs. LOWEY, Mr. SIMMONS, Mrs. THURMAN, Mr. PRICE of North Carolina, Mr. FRANK, Mr. KLECZKA, Ms. RIVERS, Mr. MOAKLEY, Mr. LANTOS, Mr. COSTELLO, Ms. HOOLEY of Oregon, Ms. HART, Ms. MCCOLLUM, Ms. SLAUGHTER, Ms. ROYBAL-ALLARD, Mr. MCGOVERN, Mr. BOYD, Ms. ESHOO, Mr. ACKERMAN, Mr. MCHUGH, Mr. SERRANO, Mr. RUSH, Mr. MENENDEZ, Mr. ABERCROMBIE, Mr. GILMAN, Mr. SAWYER, Mrs. CLAYTON, Mrs. MCCARTHY of New York, and Mr. LEVIN) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for a minimum hospital stay for mastectomies and lymph node dissections performed for the treatment of breast cancer.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Breast Cancer Patient
 5 Protection Act of 2001”.

6 **SEC. 2. COVERAGE OF MINIMUM HOSPITAL STAY FOR CER-** 7 **TAIN BREAST CANCER TREATMENT.**

8 (a) GROUP HEALTH PLANS.—

9 (1) PUBLIC HEALTH SERVICE ACT AMEND-
 10 MENTS.—(A) Subpart 2 of part A of title XXVII of
 11 the Public Health Service Act is amended by adding
 12 at the end the following new section:

13 **“SEC. 2707. STANDARDS RELATING TO BENEFITS FOR CER-** 14 **TAIN BREAST CANCER TREATMENT.**

15 “(a) REQUIREMENTS FOR MINIMUM HOSPITAL STAY
 16 FOLLOWING MASTECTOMY OR LYMPH NODE DISSEC-
 17 TION.—

1 “(1) IN GENERAL.—A group health plan, and a
2 health insurance issuer offering group health insur-
3 ance coverage, may not—

4 “(A) except as provided in paragraph
5 (2)—

6 “(i) restrict benefits for any hospital
7 length of stay in connection with a mastec-
8 tomy for the treatment of breast cancer to
9 less than 48 hours, or

10 “(ii) restrict benefits for any hospital
11 length of stay in connection with a lymph
12 node dissection for the treatment of breast
13 cancer to less than 24 hours, or

14 “(B) require that a provider obtain author-
15 ization from the plan or the issuer for pre-
16 scribing any length of stay required under sub-
17 paragraph (A) (without regard to paragraph
18 (2)).

19 “(2) EXCEPTION.—Paragraph (1)(A) shall not
20 apply in connection with any group health plan or
21 health insurance issuer in any case in which the de-
22 cision to discharge the woman involved prior to the
23 expiration of the minimum length of stay otherwise
24 required under paragraph (1)(A) is made by an at-
25 tending provider in consultation with the woman.

1 “(b) PROHIBITIONS.—A group health plan, and a
2 health insurance issuer offering group health insurance
3 coverage in connection with a group health plan, may
4 not—

5 “(1) deny to a woman eligibility, or continued
6 eligibility, to enroll or to renew coverage under the
7 terms of the plan, solely for the purpose of avoiding
8 the requirements of this section;

9 “(2) provide monetary payments or rebates to
10 women to encourage such women to accept less than
11 the minimum protections available under this sec-
12 tion;

13 “(3) penalize or otherwise reduce or limit the
14 reimbursement of an attending provider because
15 such provider provided care to an individual partici-
16 pant or beneficiary in accordance with this section;

17 “(4) provide incentives (monetary or otherwise)
18 to an attending provider to induce such provider to
19 provide care to an individual participant or bene-
20 ficiary in a manner inconsistent with this section; or

21 “(5) subject to subsection (c)(3), restrict bene-
22 fits for any portion of a period within a hospital
23 length of stay required under subsection (a) in a
24 manner which is less favorable than the benefits pro-
25 vided for any preceding portion of such stay.

1 “(c) RULES OF CONSTRUCTION.—

2 “(1) Nothing in this section shall be construed
3 to require a woman who is a participant or
4 beneficiary—

5 “(A) to undergo a mastectomy or lymph
6 node dissection in a hospital; or

7 “(B) to stay in the hospital for a fixed pe-
8 riod of time following a mastectomy or lymph
9 node dissection.

10 “(2) This section shall not apply with respect to
11 any group health plan, or any group health insur-
12 ance coverage offered by a health insurance issuer,
13 which does not provide benefits for hospital lengths
14 of stay in connection with a mastectomy or lymph
15 node dissection for the treatment of breast cancer.

16 “(3) Nothing in this section shall be construed
17 as preventing a group health plan or issuer from im-
18 posing deductibles, coinsurance, or other cost-shar-
19 ing in relation to benefits for hospital lengths of stay
20 in connection with a mastectomy or lymph node dis-
21 section for the treatment of breast cancer under the
22 plan (or under health insurance coverage offered in
23 connection with a group health plan), except that
24 such coinsurance or other cost-sharing for any por-
25 tion of a period within a hospital length of stay re-

1 quired under subsection (a) may not be greater than
2 such coinsurance or cost-sharing for any preceding
3 portion of such stay.

4 “(d) NOTICE.—A group health plan under this part
5 shall comply with the notice requirement under section
6 713(d) of the Employee Retirement Income Security Act
7 of 1974 with respect to the requirements of this section
8 as if such section applied to such plan.

9 “(e) LEVEL AND TYPE OF REIMBURSEMENTS.—
10 Nothing in this section shall be construed to prevent a
11 group health plan or a health insurance issuer offering
12 group health insurance coverage from negotiating the level
13 and type of reimbursement with a provider for care pro-
14 vided in accordance with this section.

15 “(f) PREEMPTION; EXCEPTION FOR HEALTH INSUR-
16 ANCE COVERAGE IN CERTAIN STATES.—

17 “(1) IN GENERAL.—The requirements of this
18 section shall not apply with respect to health insur-
19 ance coverage if there is a State law (as defined in
20 section 2723(d)(1)) for a State that regulates such
21 coverage that is described in any of the following
22 subparagraphs:

23 “(A) Such State law requires such cov-
24 erage to provide for at least a 48-hour hospital
25 length of stay following a mastectomy per-

formed for treatment of breast cancer and at least a 24-hour hospital length of stay following a lymph node dissection for treatment of breast cancer.

“(B) Such State law requires, in connection with such coverage for surgical treatment of breast cancer, that the hospital length of stay for such care is left to the decision of (or required to be made by) the attending provider in consultation with the woman involved.

“(2) CONSTRUCTION.—Section 2723(a)(1) shall not be construed as superseding a State law described in paragraph (1).”.

(B) Section 2723(c) of such Act (42 U.S.C. 300gg–23(c)) is amended by striking “section 2704” and inserting “sections 2704 and 2707”.

(2) ERISA AMENDMENTS.—(A) Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new section:

“SEC. 714. STANDARDS RELATING TO BENEFITS FOR CERTAIN BREAST CANCER TREATMENT.

“(a) REQUIREMENTS FOR MINIMUM HOSPITAL STAY FOLLOWING MASTECTOMY OR LYMPH NODE DISSECTION.—

1 “(1) IN GENERAL.—A group health plan, and a
2 health insurance issuer offering group health insur-
3 ance coverage, may not—

4 “(A) except as provided in paragraph
5 (2)—

6 “(i) restrict benefits for any hospital
7 length of stay in connection with a mastec-
8 tomy for the treatment of breast cancer to
9 less than 48 hours, or

10 “(ii) restrict benefits for any hospital
11 length of stay in connection with a lymph
12 node dissection for the treatment of breast
13 cancer to less than 24 hours, or

14 “(B) require that a provider obtain author-
15 ization from the plan or the issuer for pre-
16 scribing any length of stay required under sub-
17 paragraph (A) (without regard to paragraph
18 (2)).

19 “(2) EXCEPTION.—Paragraph (1)(A) shall not
20 apply in connection with any group health plan or
21 health insurance issuer in any case in which the de-
22 cision to discharge the woman involved prior to the
23 expiration of the minimum length of stay otherwise
24 required under paragraph (1)(A) is made by an at-
25 tending provider in consultation with the woman.

1 “(b) PROHIBITIONS.—A group health plan, and a
2 health insurance issuer offering group health insurance
3 coverage in connection with a group health plan, may
4 not—

5 “(1) deny to a woman eligibility, or continued
6 eligibility, to enroll or to renew coverage under the
7 terms of the plan, solely for the purpose of avoiding
8 the requirements of this section;

9 “(2) provide monetary payments or rebates to
10 women to encourage such women to accept less than
11 the minimum protections available under this sec-
12 tion;

13 “(3) penalize or otherwise reduce or limit the
14 reimbursement of an attending provider because
15 such provider provided care to an individual partici-
16 pant or beneficiary in accordance with this section;

17 “(4) provide incentives (monetary or otherwise)
18 to an attending provider to induce such provider to
19 provide care to an individual participant or bene-
20 ficiary in a manner inconsistent with this section; or

21 “(5) subject to subsection (c)(3), restrict bene-
22 fits for any portion of a period within a hospital
23 length of stay required under subsection (a) in a
24 manner which is less favorable than the benefits pro-
25 vided for any preceding portion of such stay.

1 “(c) RULES OF CONSTRUCTION.—

2 “(1) Nothing in this section shall be construed
3 to require a woman who is a participant or
4 beneficiary—

5 “(A) to undergo a mastectomy or lymph
6 node dissection in a hospital; or

7 “(B) to stay in the hospital for a fixed pe-
8 riod of time following a mastectomy or lymph
9 node dissection.

10 “(2) This section shall not apply with respect to
11 any group health plan, or any group health insur-
12 ance coverage offered by a health insurance issuer,
13 which does not provide benefits for hospital lengths
14 of stay in connection with a mastectomy or lymph
15 node dissection for the treatment of breast cancer.

16 “(3) Nothing in this section shall be construed
17 as preventing a group health plan or issuer from im-
18 posing deductibles, coinsurance, or other cost-shar-
19 ing in relation to benefits for hospital lengths of stay
20 in connection with a mastectomy or lymph node dis-
21 section for the treatment of breast cancer under the
22 plan (or under health insurance coverage offered in
23 connection with a group health plan), except that
24 such coinsurance or other cost-sharing for any por-
25 tion of a period within a hospital length of stay re-

1 quired under subsection (a) may not be greater than
2 such coinsurance or cost-sharing for any preceding
3 portion of such stay.

4 “(d) NOTICE UNDER GROUP HEALTH PLAN.—The
5 imposition of the requirements of this section shall be
6 treated as a material modification in the terms of the plan
7 described in section 102(a)(1), for purposes of assuring
8 notice of such requirements under the plan; except that
9 the summary description required to be provided under the
10 last sentence of section 104(b)(1) with respect to such
11 modification shall be provided by not later than 60 days
12 after the first day of the first plan year in which such
13 requirements apply.

14 “(e) LEVEL AND TYPE OF REIMBURSEMENTS.—
15 Nothing in this section shall be construed to prevent a
16 group health plan or a health insurance issuer offering
17 group health insurance coverage from negotiating the level
18 and type of reimbursement with a provider for care pro-
19 vided in accordance with this section.

20 “(f) PREEMPTION; EXCEPTION FOR HEALTH INSUR-
21 ANCE COVERAGE IN CERTAIN STATES.—

22 “(1) IN GENERAL.—The requirements of this
23 section shall not apply with respect to health insur-
24 ance coverage if there is a State law (as defined in
25 section 731(d)(1)) for a State that regulates such

1 coverage that is described in any of the following
2 subparagraphs:

3 “(A) Such State law requires such cov-
4 erage to provide for at least a 48-hour hospital
5 length of stay following a mastectomy per-
6 formed for treatment of breast cancer and at
7 least a 24-hour hospital length of stay following
8 a lymph node dissection for treatment of breast
9 cancer.

10 “(B) Such State law requires, in connec-
11 tion with such coverage for surgical treatment
12 of breast cancer, that the hospital length of
13 stay for such care is left to the decision of (or
14 required to be made by) the attending provider
15 in consultation with the woman involved.

16 “(2) CONSTRUCTION.—Section 731(a)(1) shall
17 not be construed as superseding a State law de-
18 scribed in paragraph (1).”.

19 (B) Section 731(c) of such Act (29 U.S.C.
20 1191(c)) is amended by striking “section 711” and
21 inserting “sections 711 and 714”.

22 (C) Section 732(a) of such Act (29 U.S.C.
23 1191a(a)) is amended by striking “section 711” and
24 inserting “sections 711 and 714”.

1 (D) The table of contents in section 1 of such
 2 Act is amended by inserting after the item relating
 3 to section 713 the following new item:

“Sec. 714. Standards relating to benefits for certain breast cancer treatment.”.

4 (b) INDIVIDUAL HEALTH INSURANCE.—(1) Part B
 5 of title XXVII of the Public Health Service Act is amend-
 6 ed by inserting after section 2752 the following new sec-
 7 tion:

8 **“SEC. 2753. STANDARDS RELATING TO BENEFITS FOR CER-**
 9 **TAIN BREAST CANCER TREATMENT.**

10 “(a) IN GENERAL.—The provisions of section 2707
 11 (other than subsection (d)) shall apply to health insurance
 12 coverage offered by a health insurance issuer in the indi-
 13 vidual market in the same manner as it applies to health
 14 insurance coverage offered by a health insurance issuer
 15 in connection with a group health plan in the small or
 16 large group market.

17 “(b) NOTICE.—A health insurance issuer under this
 18 part shall comply with the notice requirement under sec-
 19 tion 714(d) of the Employee Retirement Income Security
 20 Act of 1974 with respect to the requirements referred to
 21 in subsection (a) as if such section applied to such issuer
 22 and such issuer were a group health plan.

23 “(c) PREEMPTION; EXCEPTION FOR HEALTH INSUR-
 24 ANCE COVERAGE IN CERTAIN STATES.—

1 “(1) IN GENERAL.—The requirements of this
2 section shall not apply with respect to health insur-
3 ance coverage if there is a State law (as defined in
4 section 2723(d)(1)) for a State that regulates such
5 coverage that is described in any of the following
6 subparagraphs:

7 “(A) Such State law requires such cov-
8 erage to provide for at least a 48-hour hospital
9 length of stay following a mastectomy per-
10 formed for treatment of breast cancer and at
11 least a 24-hour hospital length of stay following
12 a lymph node dissection for treatment of breast
13 cancer.

14 “(B) Such State law requires, in connec-
15 tion with such coverage for surgical treatment
16 of breast cancer, that the hospital length of
17 stay for such care is left to the decision of (or
18 required to be made by) the attending provider
19 in consultation with the woman involved.

20 “(2) CONSTRUCTION.—Section 2762(a) shall
21 not be construed as superseding a State law de-
22 scribed in paragraph (1).”.

23 (2) Section 2762(b)(2) of such Act (42 U.S.C.
24 300gg-62(b)(2)) is amended by striking “section 2751”
25 and inserting “sections 2751 and 2753”.

1 (c) EFFECTIVE DATES.—(1) The amendments made
2 by subsection (a) shall apply with respect to group health
3 plans for plan years beginning on or after January 1,
4 2002.

5 (2) The amendments made by subsection (b) shall
6 apply with respect to health insurance coverage offered,
7 sold, issued, renewed, in effect, or operated in the indi-
8 vidual market on or after such date.

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